IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Writ Petition No. 1227 of 2004
AND
Cvil Writ Petition No. 145 of 2004

Judgment reserved on : 14.8.2006

Date of decision : 22.8.2006

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1. Dr. Chander Bhave ……. Petitioner

Versus

State of H.P. and others ……. Respondents

2. Dr. Rohini Rao …….. Petitioner

Versus

State of H.P. and others …….. Respondents

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge

Whether approved for reporting?[1]

For the petitioners : Mr. Sandeep Kaushik & Mr. Pankaj Sharma, Advocates (in CWP No. 1227 of 2004)

Mr. Kuldip Singh, Sr. Advocate, with Mr. Karan Singh, Advocate (in CWP No. 145 of 2004).

For the respondents : Mr. M.S. Chandel, Advocate General, with Mr. R.M. Bisht, Dy. A.G. for respondent Nos. 1 to 4 (in CWP 1227 of 2004).

Mr. Kuldip Singh, Sr. Advocate, with Mr. Karan Singh, Advocate, for respondent No. 5 (in CWP No. 1227 of 2004)

Mr.Sandeep Kaushik & Pankaj Sharma, Advocates, for respondent No. 6 in CWP No. 145 of 2004)

Mr. B.C. Negi, Advocate, for respondent No. 7 (in CWP No. 145 of 2004)

Surjit Singh, Judge

Common questions of law and facts are involved in these two writ petitions and, therefore, they are being disposed of by a common judgment.

Whether reporters of Local Papers may be allowed to see the Judgment?

2. Post Graduate Degree & Diploma Courses are conducted by Indira Gandhi Medical College, Shimla. For the session 2002-2003 admissions were sought to be made for Post Graduate Degree Courses in different faculties. Two seats were available in Obstetrics & Gynecology faculty, one of which was reserved for Scheduled Tribe candidates. Last date for submission of applications was 11.12.2002. Entrance test was conducted on 29.12.2002. Three candidates including the petitioners in these two writ petitions, who applied for admission against the seat reserved for Scheduled Tribe candidates, qualified the entrance test. The candidate, who was on the top in order of merit, did not join. Dr. Chander Bhave (petitioner in CWP No. 1227 of 2004) was second in order of merit, while Dr. Rohini Rao (petitioner in CWP No. 145 of 2004) was third. Both of them were called for counselling. Dr. Chander Bhave, being above Dr. Rohini Rao in the merit list, was admitted. Dr. Rohini Rao objected to the admission of Dr. Chander Bhave on the ground that he did not belong to a Scheduled Tribe and that the certificate dated 19.9.2001 (Annexure P-1 in CWP No. 1227 of 2004), produced by him, was not correct. When no heed was paid to her objection, she made representations. Ultimately an enquiry was conducted by the Executive Magistrate and it was found that Dr. Chander Bhave though a ‘Gujjar’ by caste, members of which caste, residing in old Himachal area, have been notified as belonging to a Schedule Tribe, was not a Schedule Tribe as neither he nor his father was a resident of old Himachal, but his father was a resident of a village falling in Bangana Tehsil of Una District, which was merged with Himachal Pradesh on

the reorganization of the erstwhile State of Punjab. Consequently the certificate Annexure P-1 was cancelled. Dr. Rohini Rao, after the cancellation of the said certificate, approached respondents No. 2 to 4 (in CWP No. 145 of 2004) for cancelling the admission of Dr. Chander Bhave to the Post Graduate Course in Gynecology & Obstetrics and her own admission to the said Course against the seat reserved for Scheduled Tribe. When there was no response, she filed Civil Writ Petition (CWP No. 145 of 2004) seeking a direction to the respondents to cancel the admission of Dr. Chander Bhave in Gynecology & Obstetrics P.G. Course against the seat reserved for Scheduled Tribe and to admit her against the seat vacated by the cancellation of admission of Dr. Chander Bhave.

3. Second Writ Petition No. 1227 of 2004 has been filed by Dr. Chander Bhave for setting aside the order of cancellation of his Scheduled Tribe certificate. His plea is that his father Ram Lok has been a resident of Shahtalai area of Bilaspur District (which District is part of old Himachal Pradesh) since 1957, when on joining the service as a J.B.T. teacher under the H.P. Government he started living with his brother in Shahtalai area, who was already a resident of that area and because of this his father was issued a certificate by the concerned authorities that he was a member of Scheduled Tribe being a ‘Gujjar’. He has stated that his father was recorded as a member of Scheduled Tribe even in his service record and that he (Dr. Chander Bhave) too got admission to the MBBS Course on account of his being a member of a Scheduled Tribe. In the alternative he has pleaded that by amendment of the Scheduled Castes & Scheduled

Tribes Orders carried out vide Act No. 10 of 2003, notified on 7.1.2003, the Tribes & Tribal communities, residing in the new (merged) area of Himachal Pradesh, which are identical to those which reside in old area of Himachal Pradesh and have been notified as 'Scheduled Tribes', have also been included in the list of Scheduled Tribes and hence the writ petitioner (in CWP 1227 of 2004) was a member of a Scheduled Tribe at the time of his admission to the P.G. Course.

4. In CWP No. 145 of 2004 an application had been moved seeking interim direction to respondents No. 1 to 5 to admit the writ petitioner (Dr. Rohini Rao) against the seat reserved for Scheduled Caste candidate in Obstetrics & Gynecology P.G. Degree Course, after cancelling the admission of respondent No. 6. This Court, vide order dated 29.4.2004, ordered respondents No. 1 to 5 to counsel the writ petitioner (Dr. Rohini Rao) and in case she was found to be eligible on such counselling, to admit her against the seat reserved for Scheduled Tribe candidate as respondent No. 6's admission on account of cancellation of his Scheduled Tribe certificate stood invalidated. This order was challenged by Dr. Chander Bhave (respondent No. 6 in CWP No. 145 of 2004 & petitioner in CWP No. 1227 of 2004) in the Hon'ble Supreme Court. The Hon'ble Supreme Court, vide order dated 1.10.2004, held that the High Court order could not be faulted in so far as it said that respondent No. 6 could not be permitted to rely on the admission made on the basis of the nonexistent caste certificate, but placing reliance upon its earlier judgment in **Medical Council of India vs. Madhu Singh and others,**

[2002 (7) SCC 258], held that the High Court order directing the admission of the petitioner (Dr. Rohini Rao) against the vacancy for the academic session 2003-2004 was not sustainable and consequently the order was modified to the extent that the admission of the writ petitioner (Dr. Rohini Rao), pursuant to the interim order, was to be treated to be one for the session 2004-2005. At the same time Medical Council of India was ordered to be impleaded as respondent in the writ petition.

5. In compliance with the order of the Hon'ble Supreme Court, Medical Council of India was impleaded as respondent. The Council has filed a very lengthy reply in which, placing reliance upon a large number of judgments of the Hon'ble Supreme Court, following contentions have been raised:-

(a) The regulations and guidelines, issued by the Medical Council in the matter of admission to the medical institutions, are of binding nature and should be strictly adhered to by all concerned.

(b) The petitioner (Dr. Rohini Rao) could not have been admitted to the Post Graduate Degree Course even for the session 2004-2005, because the unfilled / vacant seats cannot be carried forward and filled in the next session.

(c) Increase in the number of seats in any session is not permissible, because the number is fixed by the Medical Council of India looking to infrastructure available in a particular institution and it cannot be raised, except with its approval.

(d) The schedule for admission, teaching, training etc., as prescribed by the Government and approved by the Medical Council of India, is required to be strictly adhered to.

6. I have heard the learned counsel for the parties and perused the record.

7. The contentions raised by the Medical Council of India appear to be of little relevance to the merits of the present writ petitions. The Hon'ble Supreme Court, while disposing of the S.L.P. filed by respondent No. 6 against the interim order dated 29.4.2004 of this Court has already taken note of the fact that the writ petitioner (Dr. Rohini Rao) should undergo the Course for the full term and that is why the order of this Court, directing respondents No. 1 to 5 to admit Dr. Rohini Rao for the session 2003-2004, has been modified and her admission has been ordered to be treated as one in the session 2004-2005. There is no material on record indicating that the number of seats for Post Graduate Course in Obstetrics & Gynecology, which commenced in the session 2004-2005, had been increased because of the admission of Dr. Rohini Rao in that session and, therefore, it cannot be said that Medical Council of India's guidelines / directives / order regarding number of seats has been violated, on account of admission of Dr. Rohini Rao in the session commencing 2004-2005. For the same reason the contention that the seat, which fell vacant on account of cancellation of Scheduled Tribe certificate of Dr. Chander Bhave, was carried forward, can also not be accepted. The seat could be said to have been carried forward in case more students

than the number of seats fixed by the Medical Council of India were shown to have been admitted during the session 2004-2005.

8. Now coming to the pivotal question, i.e. whether Dr. Chander Bhave did not belong to a Scheduled Tribe at the time when he applied for admission against the seat reserved for Scheduled Tribe candidates and hence his admission against the seat reserved for Scheduled Tribe candidates in P.G. Course in Obstetrics & Gynecology was bad, certain more facts need to be noticed.

9. Himachal Pradesh was initially a Part-C State. The area comprised in the present Bilaspur District, in which the village from which Dr. Chander Bhave claims to come from falls, was not initially part of the State of Himachal Pradesh. The President of India, in exercise of power vested in him under clause (1) of Article 342 issued an order called 'The Constitution (Scheduled Tribes) (Part-C States) Order 1951', thereby notifying certain Tribes living in different Part-C States as 'Scheduled Tribes'. As regards Himachal Pradesh, the Order notified Tibetan Tribe living in Lahaul in Chamba District and Spiti in Mahasu District, as a 'Scheduled Tribe'. The area of Bilaspur, which was a separate 'C' State, was merged with the State of Himachal Pradesh (Part-C State), vide Himachal Pradesh & Bilaspur (New State) Act, 1954, which came into force on 1.7.1954. When Part-C States were abolished and some of them were merged with other States and some, including Himachal Pradesh, were declared as 'Union Territories', changes were made in the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 and various Tribes / Tribal communities, including 'Gujjars' living throughout the Union

Territory of Himachal Pradesh, were declared as ‘Scheduled Tribes’. This change was carried out in the year 1956 vide Act No. 63 of 1956 which came into force with effect from 25.9.1956.

10. In 1966 when the erstwhile State of Punjab was reorganized, vide the Punjab Reorganization Act, 1966, some areas from that State were merged with the Union Territory of Himachal Pradesh. Those areas included the area comprised in present day Una District, including its Tehsil Bangana. Section 28 of the Punjab Reorganization Act, 1956 provided that on and from the ‘appointed day’ (1.11.1966) the Constitution (Scheduled Tribe) Order, 1950 and the Constitution (Scheduled Tribe) (Union Terrotiries) Act, 1951 were to stand amended as directed in the Tenth Schedule and the Eleventh Schedule, respectively. The effect of the amendments was that ‘Gaddi’, ‘Swangla’, ‘Bhot or Bodh’ living in Lahaul Spiti District, which was earlier part of Punjab State, were omitted from the Constitution (Scheduled Tribe) Order, 1950 and included in the Constitution (Scheduled Tribe) (Union Territories) Order, 1951. Another amendment carried out in the Constitution (Scheduled Tribe) (Union Territories) Order, 1951 was that the Tribes / Tribal communities, residing in the areas which came from Punjab and having nomenclature identical to those residing in the original area of Himachal Pradesh Union Territory, were excluded from the list of ‘Scheduled Tribes’, meaning thereby that the ‘Gujjars’ living in the areas which were earlier part of the erstwhile Punjab State and which areas were merged with Himachal Pradesh Union Territory, were not to be treated as members of a Scheduled Tribes. It may be noticed

that even when these areas were the part of erstwhile State of Punjab, ‘Gujjars’ residing therein had not been declared as a ‘Scheduled Tribe’.

11. In the year 1971, The State of Himachal Pradesh Act, 1970 was passed and the Union Territory of Himachal Pradesh was established as a new State of the Union of India. Section 20 of this Act of 1970 provided that from the ‘appointed day’ (25.1.1971) the Constitution (Scheduled Tribes) Order, 1950 and the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 were to stand amended as indicated in the Third and the Fourth Schedules. The effect of these amendments was that name of Himachal Pradesh was omitted from the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 and included in the Constitution (Scheduled Tribes) Order, 1950 by adding Part-XIII to the later Order. It was specifically provided in Part-XIII that specified Tribes / Tribal communities including ‘Gujjars’ living in old areas of Himachal Pradesh and some specified Tribes / Tribal communities living in Lahaul & Spiti District, which District was merged with Himachal Pradesh on the reorganization of erstwhile State of Punjab, were included in the Constitution (Scheduled Tribes) Order, 1950.

12. The above stated position makes it clear that though the ‘Gujjars’ residing in Shahtalai area of Bilaspur District were a ‘Scheduled Tribe’, the ‘Gujjars’ living in Una District were not so, until the amendment carried out vide Act No. 10 of 2003, which came into force on 7.1.2003. Relevant date for determining whether Dr. Chander Bhave belongs to a Scheduled Tribe or not, is 11.12.2002,

i.e. the last date for receipt of applications for taking the entrance test for admission to the P.G. Course, in question.

13. There is placed on record copy of a Government of India Ministry of Home Affairs' letter No.B.C.12025/2/76-S.C.T.I, dated 22nd March, 1977 (Annexure R-1 in CWP No. 145 of 2004 & Annexure R-6/A in CWP No. 1227 of 2004). This letter contains instructions and guidelines for issue of Scheduled Tribes / Scheduled Castes certificates. The letter starts with the explanation why a specified community living in a specified area has been declared to be a 'Scheduled Tribe', while similar community residing in a different area has not been given the status of 'Scheduled Tribe'. The explanation offered is that such a specific community living in a specific area might have been suffering from certain disabilities while the same community living in another area may not have been. Then the letter says that the residence of a particular person in a particular locality assumes special significance and the word 'residence' is not to be understood in the literal or ordinary sense of the word but it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste / tribe in relation to that locality. This position has been illustrated by saying that if a member of a Scheduled Tribe having permanent residence in the specific area temporarily goes out of that area for earning his livelihood or seeking education etc., he does not cease to be a permanent resident of that area and he is entitled to the status of a member of Scheduled Tribe and conversely if a member of a specific community has his

temporary residence in the specific area, he will not get the status of a member of Scheduled Tribe on account of such temporary residence.

14. The letter in the second part of para 3 says that the person applying for a certificate of Scheduled Tribe should have had his place of permanent abode in the specific area at the time of the notification of the relevant Presidential Order and that where such person is born after the date of the notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribe status is the place of permanent abode of his parents at the time of the notification of the Presidential Order under which he claims to belong to such a Tribe.

15. The relevant Presidential Order in this case is the Constitution (Scheduled Tribes) (Part-C States) Order, 1951, which was notified in the Gazette of India Extraordinary on 20.9.1951. However, at the time of the notification of this order, the area of Bilaspur District was neither a Part-C State nor was it a part of Himachal Pradesh, which was a Part-C State at that time. It was merged with Part-C State of Himachal Pradesh in 1954, vide H.P. & Bilaspur (New State) Act, 1954 (Act No. 32 of 1954), which came into force on 1.7.1954 when it was published in the Gazette of India, 1954 Extraordinary Part-III. As already noticed, in the Constitution (Scheduled Tribe) (Part-C State) Order, 1951 only Tibetan residing in Lahaul in Chamba and Spiti in Mahasu Districts had been notified as a ‘Scheduled Tribe’. Therefore, the merger of the State of Bilaspur with the Part-C State of Himachal Pradesh did not confer the status of ‘Scheduled Tribe’ upon the ‘Gujjars’ living in Bilaspur area, because at

that time ‘Gujjars’ living in the other areas of Part-C State of Himachal Pradesh were also not included in the Order. It was when Scheduled Tribe Orders (Amendment Act), 1956 (Act No. 63 of 1956), which came into force on 25.9.1956 that ‘Gujjars’ and some other communities living in Himachal Pradesh were declared as ‘Scheduled Tribe’ and by that time Bilaspur was already a part of Himachal Pradesh.

16. Respondent No. 6 Dr. Chander Bhave was admittedly born much after 25.9.1956, because he has stated his age to be 26 years in his affidavit on 12.12.2004. Because Dr. Chander Bhave was born after 25.9.1956 when the ‘Gujjar’ community residing in Himachal Pradesh was declared as ‘Scheduled Tribe’, it is not his permanent place of abode but that of his parents which is required to be seen in view of the instructions / guidelines contained in Annexure R-1 supra.

17. According to the report based on the enquiry conducted by the Executive Magistrate (copy Annexure P-11 in CWP No. 1227 of 2004), the parents of Dr. Chander Bhave were earlier permanent residents of Patwar Circle Lathyani, Tehsil Bangana, District Una and that presently they are permanent residents of Gram Panchayat Takarla, Tehsil Amb, District Una. The report further shows that Shri Ram Lok, father of Dr. Chander Bhave and his two brothers Madho Ram and Madan Lal had purchased some land in village Changar Talia, District Bilaspur in the year 1986. The report further reads that Shri Ram Lok, father of Dr. Chander Bhave does not have any house in village Changar Talia of Bilaspur District nor is his name entered in

any Panchayat or Nagar Parishad record of that District suggesting that he is permanent resident of Shatalai.

18. There is another document on record, i.e. Annexure R-5/6 (in CWP No. 1227 of 2004) which is photo copy of the third page of the service book of Shri Ram Lok, father of Dr. Chander Bhave. As per the service book, Shri Ram Lok, son of Shri Shayama Ram is resident of village Droh, P.O. Barsar, Tehsil Hamirpur. The residence of the father of Shri Ram Lok, namely Shri Shayama Ram is also recorded as 'village Droh, P.O. Barsar, Tehsil Hamirpur, Kangra District'. It may be noticed that Kangra District, until the reorganization of erstwhile State of Punjab in the year 1966, was also part of Punjab and so the 'Gujjars' and some other Tribes / Tribal communities (notified as 'Scheduled Tribes' vide Act No. 63 of 1956), residing in Kangra area, were not 'Scheduled Tribes' like their counter parts in old Himachal area until 7.1.2003. This service book leaf, copy Annexure R-5/6, was prepared on 25.12.1956, when Shri Ram Lok joined Government service.

19. Annexure P-12 (in CWP 1227 of 2004) is the copy of page 3 from the service book of mother of Dr. Chander Bhave. According to this service book, which was prepared in 1994, the mother of Dr. Chander Bhave is resident of village Talai, P.O. Talai, Tehsil Ghumarwin, District Bilaspur. Her father's residence is shown to be of Jullunder. That means it is on the basis of residence of her husband that she claims to be resident of village Talai of District Bilaspur.

20. As a matter of fact, Dr. Chander Bhave himself has placed on record a document in CWP No. 145 of 2004, which suggests that his father was permanent resident of Gram Panchayat Chamyari, Development Block Bangana, District Una. The document is a copy of Pariwar Register Annexure R-6/F. As per entry in this document, Shri Ram Lok, the father of Dr. Chander Bhave, is the head of the family and it has its residence in Gram Panchayat Chamyari, Development Block Bangana, District Una. His wife Smt. Vimla Kumari is recorded as a member of his family. There is a note in column No. 11 of this document that the family has migrated from the village in 1967. That means upto 1967 the father of Dr. Chander Bhave was resident of an area the 'Gujjars' living wherein were not notified as a 'Scheduled Tribe'.

21. Another document placed by Dr. Chander Bhave on record (in CWP No. 145 of 2004) is the copy of plaint in a suit for declaration, which he filed in the Court of Civil Judge, Ghumarwin, seeking a declaration that the cancellation of his Scheduled Tribe Certificate by the Executive Magistrate, vide order dated 23.2.2004, was illegal and void. In the said plaint he revealed some facts, which go to show that his father had never been a permanent resident of Bilaspur District. In para 2 of the plaint (copy Annexure R-1 in CWP No. 145 of 2004) it is stated that the elder brother of the father of Dr. Chander Bhave purchased land and settled in Shahtalai, Tehsil Jhandutta, District Bilaspur in 1955 and that the father of the plaintiff also joined Government service as J.B.T. teacher, then he did his Graduation and then B.Ed. and was living with his elder brother Shri

Dharam Singh, who was Patwari in the Revenue Department in District Bilaspur. It is stated that after joining service as T.G.T. with H.P. Government, permanent address was necessary for service book, but the father of the plaintiff was not having any property in his own name and, therefore, at the time of preparation of his service book permanent address of Shah-Talai, Tehsil Ghumarwin, District Bilaspur was entered in the service book. In the plaint Dr. Chander Bhave did not state as to where his father lived or had his permanent place of abode before joining H.P. Government service as T.G.T. As a matter of fact, the father of Dr. Chander Bhave joined as J.B.T. teacher initially in the state of Punjab as is made out from copy of a leaf from his service book Annexure R-5/6 (in CWP 1227 of 2004). He became T.G.T. according to Dr. Chander Bhave's own showing (refer to Annexure P-17 in CWP 1227 of 2004, which is a statement containing the service particulars of the father of Dr. Chander Bhave) on 10.11.1967, that is to say after the merger of some areas of erstwhile State of Punjab with Himachal Pradesh. He joined service as J.B.T. teacher under the Punjab Government, per copy of a folio from his service book Annexure R-5/6 in CWP No. 145 of 2004. It appears that he remained J.B.T. teacher under the Punjab Government till the reorganization of erstwhile State of Punjab and he was allocated to Himachal Pradesh when reorganization took place as J.B.T. teacher.

22. Now, when the father of Dr. Chander Bhave had been a permanent resident of a village in Tehsil Bangana, District Una till 1967, neither he (father of Dr. Chander Bhave) nor Dr. Chander

Bhave himself was a member of Scheduled Tribe. As already noticed, the instructions / guidelines issued by the Government of India (Annexure R-1 in CWP No. 145 of 2004 and Annexure R-6/A in CWP No. 1227 of 2004) say that in the case of persons born after the date of the notification of the Presidential Order, the certificate of Scheduled Tribe is to be issued on the basis of the place of permanent abode of parents of such persons on the date of the notification of the relevant Presidential Order. In the present case 'Gujjars' of Himachal Pradesh were notified as a 'Scheduled Tribe' with effect from 25.9.1956, when their community was included in the Constitution (Scheduled Tribe) (Part-C States) Order, 1951, vide Act No. 63 of 1956 and, therefore, the date which is required to be seen for a place of permanent abode of the parents of Dr. Chander Bhave, is 25.9.1956. As noticed hereinabove, mother of Dr. Chander Bhave claims to be resident of Shahtalai in Bilaspur District on account of her marriage with Dr. Chander Bhave's father. Prior to that she was a resident of Jullunder City, because her father is recorded as a resident of that place in her service book (copy of relevant folio Annexure P-12 in CWP 1227 of 2004). His father's permanent place of abode on the aforesaid date, i.e. 25.9.1956, as explained hereinabove, was a village in Bangana Tehsil of Una District, which was then a part of Punjab State. Thus, Dr. Chander Bhave was not a member of Scheduled Tribe and, therefore, the certificate of his being a Member of Scheduled Tribe, issued by the concerned Executive Magistrate was incorrect and has, therefore, rightly been cancelled.

23. As a consequence of the above discussion and conclusion Writ Petition No. 1227 of 2004, filed by Dr. Chander Bhave, is dismissed; Writ Petition No. 145 of 2004, filed by Dr. Rohini Rao, is allowed.

24. Dr. Rohini Rao, writ petitioner in CWP No. 145 of 2004, has already been admitted to P.G. Course in Obstetrics & Gynecology against the seat reserved for Schedule Tribe candidate, vide interim order dated 29.4.2004 of this Court, as modified by the Hon'ble Supreme Court, vide judgment dated 1.10.2004, delivered in Civil Appeal No. 6562 of 2004, arising out of S.L.P. (C) No. 9716 of 2004, titled Chander Bhave vs. Rohini Rao and others. She is not entitled to any further relief nor has she claimed any. Thus, no other order, except that the interim relief already granted is made final, is required to be passed. It is ordered accordingly.

August 22, 2006 (BC) **(Surjit Singh)**
Judge